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U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

1 GREENBERG TRAURIG, LLP

2 Ginger Pigott (SBN 162908)

3 Amy B. Alderfer (SBN 205482)

4 Email: pigottg@gtlaw.com; alderfera@gtlaw.com

5 1840 Century Park East, Suite 1900

6 Los Angeles, CA 90067

7 Tel: (310) 586-7700; Fax: (310) 586-7800

8 Attorneys for Defendant Teva Pharmaceuticals USA, Inc.

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 ED CV12-02039VAP (DTBX)

12 CASE NO.: _____

13 SHIRLEY THOMAS, a single
14 individual; BARBARA MCKISKI,
15 individually and as next of kin to
16 KENNETH MCKISKI, deceased;
17 ANGEL MCMILLIAN, individually and
18 as next of kin to TERRY L.
19 MCMILLAN, deceased;
20 KRISTINE MORGAN, individually and
21 as next of kin to DENNIS WAGNER,
22 deceased; YVONNE MOSS, individually
23 and as next of kin to STEVEN W. MOSS,
24 deceased; WARREN NOEL, individually
25 and as next of kin to MARY NOEL,
26 deceased; LINDA PHILLIPS,
27 individually and as next of kin to
28 BOBBY L. PHILLIPS, deceased;
MARTHA PROCTOR, individually and
as next of kin to
MICHAEL R. PROCTOR, deceased;
TINA RAINE, individually and as next
of kin to RONALD RAINE, deceased;
ROCKY RAMER, individually and as
next of kin to GLENYS RAMER,
deceased; JAMES RICHARDSON,
individually and as next of kin to
BARBARA RICHARDSON, deceased;
PATRICK ROBINSON, individually and

NOTICE OF REMOVAL BY
DEFENDANT TEVA
PHARMACEUTICALS USA,
INC. UNDER 28 U.S.C. §§ 1331,
1332, 1367, 1441, 1446, AND 1453

1
NOTICE OF REMOVAL

CONFORM THIS COPY

1 as next of kin to BRANDY ROBINSON,
2 deceased; SANDRA ROBINSON,
3 individually and as next of kin to
4 DANIELLE SCARBROUGH, deceased;
5 KAY ROLLER, individually and as next
6 of kin to CHARLES ROLLER, deceased;
7 JAMES ROSS, individually and as next
8 of kin to MARIE THORPE, deceased;
9 BARBARA SAVAGE, individually and
10 as next of kin to
11 AMBERLEE KAE MURPHY, deceased;
12 NONA SEALS, individually and as next
13 of kin to CHARLES RAY SEALS,
14 deceased; WILLIAM SHEPPARD,
15 individually and as next of kin to
16 EDDIE M. SHEPPARD, deceased;
17 MARGARET SHERRY, individually
18 and as next of kin to ANTHONY
19 SHERRY, deceased; TAMMY SHORE,
20 individually and as next of kin to
21 MARK D. SHORE, deceased;
22 LINDA SIMONS, individually and as
23 next of kin to THOMAS SIMONS,
24 deceased; SUSAN SNODGRASS,
25 individually and as next of kin to
26 FRANKLIN BAIR, deceased;
27 ANETRA SNYDER, individually and as
28 next of kin to ELIZABETH PIERCE,
deceased; BARBARA STEWART,
individually and as next of kin to
TERRY W. STEWART SR., deceased;
GLADYS STONE, individually and as
next of kin to
GILMER D. STONE, deceased;
ELISABETH STRAUSS, individually
and as next of kin to
CLARA HENDREN, deceased;
LINDA SUDDUTH, individually and as
next of kin to JAMES STEVENSON,
deceased; MARGARET TAYLOR,
individually and as next of kin to
CHARLES E. TAYLOR, deceased;
SARAH TUOHY, individually and as

1 next of kin to SAMUEL WILLIS,
 2 deceased;
 3 SHIRLEY VANZYVERDEN,
 4 individually and as next of kin to
 5 JOHNNIE PAUL PARTIS, deceased;
 6 ARTHUR WHITE, individually and as
 7 next of kin to KAREN M. WHITE,
 8 deceased; DONNA WHITE, individually
 9 and as next of kin to EARL WHITE,
 10 deceased; SAMANTHA WHITE,
 11 individually and as next of
 12 kin to JAMES SHELTON, deceased;
 13 KRISTEN WILLIAMS, individually and
 14 as next of kin to CAROL ANTHONY,
 15 deceased; BILLIE JO WINNER,
 16 individually and as next of
 17 kin to BARBARA L. CLARK, deceased;
 18 BILLIE JO WINNER, individually and
 19 as next of kin to CARLTON J. CLARK,
 20 deceased; PATRICIA WOMACK,
 21 individually and as next of kin to
 22 CHAUNCEY WOMACK, deceased;
 23 LINDA WOOD, individually and as
 24 next of kin to THOMAS WOOD,
 25 deceased; and, SHEILA YANCEY,
 26 individually and as next of kin
 27 to SARITA DURDEN, deceased;
 28

Plaintiffs,

v.

21 MCKESSON CORPORATION; ELI
 22 LILLY AND COMPANY;
 23 AAIPHARMA, INC.; AAIPHARMA
 24 LLC; AAI DEVELOPMENT
 25 SERVICES, INC.; NEOSAN
 26 PHARMACEUTICALS INC;
 27 XANODYNE PHARMACEUTICALS,
 28 INC.; QUALITEST
 PHARMACEUTICALS, INC.;
 VINTAGE PHARMACEUTICALS,
 INC.; PROPST DISTRIBUTION, INC.;
 BRENN DISTRIBUTION, INC.;
 BRENN MANUFACTURING, INC.;

1 VINTAGE PHARMACEUTICALS,
2 LLC; GENERICS INTERNATIONAL
3 (US), INC.; GENERICS BIDCO I,
4 LLC; GENERICS BIDCO II, LLC;
5 GENERICS INTERNATIONAL (US
6 PARENT), INC.; ENDO
7 PHARMACEUTICALS, INC.; ENDO
8 PHARMACEUTICALS HOLDINGS
9 INC.; CORNERSTONE
10 BIOPHARMA, INC.;
11 CORNERSTONE BIOPHARMA
12 HOLDINGS, INC.; TEVA
13 BIOPHARMACEUTICALS, INC.;
14 TEVA PHARMACEUTICALS USA,
15 INC.; MYLAN
16 PHARMACEUTICALS, INC.,
17 MYLAN, INC.; COVIDIEN PLC;
18 COVIDIEN INC.; MALLINCKRODT
19 INC.; WATSON
20 PHARMACEUTICALS, INC.,
21 and DOES 1 through 50, inclusive,
22 Defendants.
23
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1 Defendant Teva Pharmaceuticals USA, Inc. ("Removing Defendant") hereby
 2 removes to this Court the state court action described below. Removal is warranted
 3 under 28 U.S.C. §§ 1441(b), 1446, and 1453 because this is a civil action over which
 4 this Court has original jurisdiction under 28 U.S.C. §§ 1331, 1332, and 1367. In
 5 support of removal, Removing Defendant states as follows:

6 BACKGROUND

7 1. On or about November 13, 2012, Plaintiffs commenced this action by
 8 filing a complaint in the Superior Court of Riverside County, in the State of
 9 California, bearing case number RIC1216707. Plaintiffs are 39 individuals (38 of
 10 which allege claims individually and as personal representatives of deceased
 11 individuals) who allege cardiovascular injuries as a result of ingestion of prescription
 12 pain medications containing the active ingredient propoxyphene. (*See* Ex. A, Compl.
 13 ¶¶ 1, 90.)¹ Plaintiffs improperly fail to allege where any of them reside (except to
 14 state that Plaintiff Shirley Thomas is a resident of this State (*id.* ¶ 14)), which form of
 15 propoxyphene they took, which Defendant manufactured it, or what cardiovascular
 16 injury they allegedly experienced.

17 2. Plaintiffs assert claims against numerous entities they allege are or were
 18 involved in the manufacture of brand name and generic prescription pain medications
 19 containing propoxyphene (*id.* ¶¶ 25-89) and also against one purported distributor of
 20 prescription medications, McKesson Corporation ("McKesson"). (*Id.* ¶¶ 18-24.)
 21 Plaintiffs seek to recover compensatory and punitive damages against all Defendants
 22 under numerous legal theories, including that the entities allegedly involved in the
 23 manufacture of generic prescription medications containing propoxyphene (the
 24 "Generic Defendants") have improperly breached their duty to use the same FDA-
 25 approved labeling as the brand companies. (*See id.* ¶¶ 5-7.)

26
 27
 28 ¹ All exhibits referenced herein are attached to the accompanying declaration
 of Amy B. Alderfer.

1 3. The instant action is one of more than twenty multi-plaintiff lawsuits
 2 alleging injuries from ingestion of propoxyphene-containing pain products filed from
 3 approximately November 9, 2012 to November 16, 2012, in numerous California
 4 counties.² These lawsuits join the seven other lawsuits alleging injury resulting from
 5 ingestion of propoxyphene pain products filed in Los Angeles and San Francisco
 6 Counties in late 2011 and early 2012.

7 4. On October 23, 2012, attorneys from Khorammi, LLP (Oakland, CA),
 8 Davis & Crump PC (Gulfport, MS), The Sill Law Group PLLC (Edmond, OK) and
 9 Pearson Randall & Schumacher, PA (Minneapolis, MN) (“Coordination Counsel”)
 10 filed a petition with the California Judicial Counsel to establish a coordinated
 11 proceeding before a single trial judge for California state-court products liability
 12 actions alleging personal injuries due to prescription pain medications containing
 13 propoxyphene. (*See* Ex. B, Pet. for Coord.) In support of the Petition, Coordination
 14 Counsel claims that “[o]ne judge hearing all of the actions for all purposes in a
 15 selected site or sites will promote the ends of justice.” (Ex. C, Mem. in Support of
 16 Pet. for Coord. at 8.)

17 5. The Petition for Coordination specifically identifies the seven “original”
 18 actions described in paragraph 3 above, which embrace the claims of more than 100
 19 individual Plaintiffs, and specifically states that Coordination Counsel intends to
 20 include in the coordination additional, then-unfiled claims. (*Id.*) Significantly,
 21 subsequent to the filing of the Petition for Coordination, Elise Sanguinetti, whose
 22 firm Khorarmi LLP serves as Coordination Counsel and who submitted a declaration
 23 in support of the Petition for Coordination, has moved to stay the seven “original”
 24 actions pending a ruling on coordination, stating that “[c]oordination of all the
 25 California Propoxyphene cases makes sense.” (*See* Ex. E., Mem. in Supp. of Mot. to
 26

27 ² A Notice of Pendency of Other Actions or Proceedings and a Notice of
 28 Related Cases are both filed concurrently herewith. Removing Defendant will amend
 and/or supplement the same when it learns of new information about the various
 actions filed throughout California.

1 Stay at 4, *Freitas v. McKesson Corp.*, No. CGC 11-515537 (Cal. Super. Ct. S.F.
 2 County Nov. 9, 2012.) Thus, the Petition now embraces the claims of more than 500
 3 individuals. (*See supra* note 2.)

4 6. As set forth more fully below, this case is properly removed to this
 5 Court pursuant to 28 U.S.C. § 1441 because there is federal jurisdiction on three
 6 independent grounds — (a) as a mass action, pursuant to 28 U.S.C. § 1332(d)(11); (b)
 7 under federal question and supplemental jurisdiction pursuant to 28 U.S.C. §§ 1331
 8 and 1367; and (c) as an action between citizens of different states in which the
 9 amount in controversy exceeds \$75,000, pursuant to 28 U.S.C. § 1332(a) — and
 10 Removing Defendant has satisfied the procedural requirements for removal set forth
 11 in 28 U.S.C. §§ 1446 and 1453.

12 **THIS CASE IS REMOVABLE AS A MASS ACTION**

13 7. This case is removable pursuant to the mass action provisions of the
 14 diversity jurisdiction statute. 28 U.S.C. § 1332(d)(11). An action is removable as a
 15 mass action where it meets the following requirements:

- 16 a. It involves the monetary relief claims of 100 or more persons that
 17 are proposed to be tried jointly on the ground that the plaintiffs' claims
 18 involve common questions of law or fact, *see id.* § 1332(d)(11)(B)(i);
- 19 b. The aggregate amount in controversy exceeds \$5,000,000 and the
 20 claims of the individual plaintiffs each exceed the amount of \$75,000,
 21 *see id.* §§ 1332(a), (d)(2), (d)(11)(B)(i); and
- 22 c. Any plaintiff is a citizen of a State different from any defendant,
 23 *see id.* § 1332(d)(2)(A).

24 8. As set forth below, this action and the other propoxyphene actions
 25 embraced by the Petition for Coordination satisfy all the jurisdictional requirements
 26 for a mass action. In addition, Removing Defendant has satisfied all procedural
 27 requirements for removal of a mass action pursuant to 28 U.S.C. §§ 1446 and 1453.
 28 Accordingly, mass action removal is proper.

A. The Petition for Coordination Proposes Joint Trial of the Claims of 100 or More Persons

9. This action is removable as a mass action because the Petition for Coordination proposes to try this case jointly with numerous other propoxyphene actions embracing the claims of more than 500 individuals. (*See* Pet. for Coord. at 3-7.) As the Seventh Circuit recently held in *In re Abbott Laboratories, Inc.*, No. 12-8020, 2012 WL 4875584 (7th Cir. Oct. 16, 2012) (to be published in F.3d), a petition for state-court coordination of individual actions may render those actions a “mass action” for purposes of removal where, as here, the coordination petition proposes joint trial of the individual actions. *See id.* at *1. And while a mass action does not result where individual actions are joined “upon motion of a defendant,” 28 U.S.C. § 1332(d)(11)(B)(ii)(II); *see also Tanoh v. Dow Chemical Co.*, 561 F.3d 945, 953 (9th Cir. 2009); *Anderson v. Bayer Corp.*, 610 F. 3d 390, 393 (7th Cir. 2010), there is no such barrier where, also as here, the proposal for joint trial originates with the plaintiffs. *See Abbott*, 2012 WL 4875584, at *3.

10. Here, the proposal for joint trial in the Petition for Coordination is even clearer than it was in *Abbott*. In that case, the Seventh Circuit held that a petition for coordination need not specifically request joint trial because “a proposal for a joint trial can be implicit.” *Id.* at *3; *see also Bullard v. Burlington N. Santa Fe Ry. Co.*, 535 F.3d 759, 762 (7th Cir. 2008); *Koral v. Boeing Co.*, 628 F.3d 945, 947 (7th Cir. 2011). The Seventh Circuit found that the plaintiffs’ coordination petition implicitly requested a joint trial where it sought coordination “‘through trial’” and “‘not solely for pretrial proceedings’” and asserted that coordination “‘through trial ‘would also facilitate the efficient disposition of a number of universal and fundamental substantive questions applicable to all or most Plaintiffs’ cases *without the risk of inconsistent adjudication* in those issues between various courts.’” *Abbott*, 2012 WL 4875584, at *3 (citation omitted).

1 11. Here, the Petition for Coordination presents all of the factors (and more)
 2 that the Seventh Circuit held constituted a request for a joint trial in *Abbott*. Initially,
 3 like the *Abbott* plaintiffs' request for coordination "through trial," the Petition here
 4 proposes "[o]ne judge hearing *all of the actions* for *all purposes* in a selected site or
 5 sites" in order to "promote the ends of justice." (Mem. in Supp. of Pet. for
 6 Coordination at 8 (emphasis added).) Coordination for "all purposes" naturally
 7 embraces coordination for trial.

8 12. Moreover, like the *Abbott* plaintiffs' assertions concerning the "*risk of*
 9 *inconsistent adjudication*," the Petition for Coordination here emphasizes that
 10 "[f]ailure to coordinate these actions will result in the disadvantages of duplicate and
 11 inconsistent rulings, orders, or judgments" as to "issues pertaining to liability,
 12 allocation of fault and contribution, as well as the same wrongful conduct of
 13 defendants." (Mem. in Supp. of Pet. for Coordination at 10; *see also id.* at 6, 8; Ex.
 14 D, Sanguinetti Decl. in Supp. of Coordination ¶ 11 ("Without coordination, two or
 15 more separate courts will decide essentially the same issues and may render different
 16 rulings on liability and other issues.")) In the same vein, the Petition for
 17 Coordination here argues that there are "common issues" among each of the
 18 constituent actions, including *whether the plaintiffs are entitled to compensatory and*
 19 *punitive damages*. (See Sanguinetti Decl. in Supp. of Coordination ¶ 7.) The
 20 Petition's proposal to resolve the determinations of liability, allocation of fault, and
 21 award of compensatory and punitive damages as "common issues" necessarily
 22 requires a joint trial.³

23 13. Indeed, the Seventh Circuit cited similar remarks by plaintiffs
 24 concerning the risk of inconsistent adjudication of purported common issues when it
 25 observed that "it is difficult to see how a trial court could consolidate the cases as
 26 _____

27 ³ Removing Defendant does not concede that Plaintiffs are entitled to a joint
 28 trial, but merely notes that the Petition for Coordination proposes one, thereby
 entitling Defendants to remove the cases pursuant to the mass action provisions of 28
 U.S.C. § 1332.

1 requested by plaintiffs and not hold a joint trial or an exemplar trial with the legal
2 issues applied to the remaining cases. In either situation, plaintiffs' claims would be
3 tried jointly." *Abbott*, 2012 WL 4875584, at *3; *see also* 28 U.S.C. §
4 1332(d)(11)(B)(i) (providing that the mass action standard is satisfied where joint
5 trial is proposed "on the ground that the plaintiffs' claims involve common questions
6 of law or fact"). Thus, even a joint trial as to certain issues, which the Petition for
7 Coordination repeatedly suggests in its discussion of avoiding inconsistent rulings as
8 to "common issues," is sufficient to establish mass action jurisdiction pursuant to 28
9 U.S.C. § 1332(d)(11).

10 14. In addition, the Petition for Coordination envisions that a joint trial
11 would put pressure on Defendants to settle all California propoxyphene cases.
12 Coordination Counsel's declaration in support of the Petition states that one of the
13 primary motivating factors for settling cases is "the avoidance of the risk of an
14 adverse judgment at trial." (Sanguinetti Decl. in Supp. of Coordination ¶ 12.)
15 Coordination Counsel argues that coordination is mandated here because if the cases
16 are not coordinated, "[s]ettlement of one of these cases may not end the litigation in
17 the other . . . cases." (*Id.*) Implicit in this call for settlement is a proposal for joint
18 trial: for the threat of adverse judgment at trial to compel settlement or end litigation
19 in the other cases, there must be either a joint trial of all cases, or a judgment at an
20 exemplar trial that is binding on the other cases. Thus, "[i]n either situation" there is
21 a proposal for joint trial and the first mass action requirement is satisfied. *Abbott*,
22 2012 WL 4875584, at *3.

23 15. Finally, as in *Abbott*, Plaintiffs have done nothing to suggest that they
24 propose coordination "solely for pretrial proceedings." 28 U.S.C. §
25 1332(d)(11)(B)(ii)(IV); *see also Abbott*, 2012 WL 4875584, at *3. To the contrary,
26 for all the reasons set forth above, the Petition for Coordination necessarily
27 constitutes a proposal for coordination for trial.
28

1 16. Accordingly, the Petition for Coordination proposes joint trial of the
 2 monetary claims of more than 100 individuals, and the first requirement of mass
 3 action removal is satisfied.

4 **B. The Amount in Controversy Is Satisfied**

5 17. Both the individual \$75,000 and aggregate \$5,000,000 amount in
 6 controversy requirements for mass action removal are readily satisfied. *See* 28
 7 U.S.C. §§ 1332(a), (d)(2), (d)(11)(B)(i). Indeed, the Petition for Coordination itself
 8 admits that there are “multi-millions of dollars at stake” in these cases (Pet. for
 9 Coord. at 10), and Coordination Counsel has publicly stated that the propoxyphene
 10 litigation “has the potential to be in the billions of dollars for recoveries around the
 11 country.”⁴

12 18. First, it is apparent from the face of the Complaint, and the serious
 13 nature of the “severe cardiovascular injuries” alleged by each Plaintiff (*see* Compl. ¶
 14 90), that the amount in controversy exceeds \$75,000 for each Plaintiff, just as it is for
 15 the claims in the other actions embraced by the Petition. Where, as here, Plaintiffs
 16 allege serious bodily injuries, courts have readily found that the amount-in-
 17 controversy requirement is satisfied. *See In re Rezulin Prods. Liab. Litig.*, 133 F.
 18 Supp. 2d 272, 296 (S.D.N.Y. 2001). In addition, compensatory and punitive damages
 19 in excess of the jurisdictional amount of \$75,000 have been awarded in products
 20 liability cases in California. *See, e.g., Stewart v. Union Carbide Corp.*, 190 Cal. App.
 21 4th 23, 38, 117 Cal. Rptr. 3d 791, 804 (2010); *Karlsson v. Ford Motor Co.*, 140 Cal.
 22 App. 4th 1202, 1223-24, 45 Cal. Rptr. 3d 265, 282-83 (2006); *Jones v. John Crane,*
 23 *Inc.*, 132 Cal. App. 4th 990, 1012, 35 Cal. Rptr. 3d 144, 161 (2005). Other federal
 24 courts have thus concluded that the amount in controversy exceeded \$75,000 in
 25 similar pharmaceutical cases. *See, e.g., Smith v. Wyeth, Inc.*, 488 F. Supp. 2d 625,

26 _____
 27 ⁴ Olivia Whitaker, *Oklahoma Attorney Predicts Billions of Dollars in Darvocet*
 28 *Lawsuit Recoveries* (Feb. 9, 2011), available at <http://www.articlesbase.com/mental-health-articles/oklahoma-attorney-predicts-billions-of-dollars-in-darvocet-lawsuit-recoveries-4199525.html>.

1 630-31 (W.D. Ky. 2007) (denying motion to remand); *accord Copley v. Wyeth, Inc.*,
 2 No. 09-722, 2009 WL 1089663, at *3 (E.D. Pa. Apr. 22, 2009). In addition, because
 3 Plaintiffs' demands for punitive damages are also includable in the amount in
 4 controversy, *see Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir.
 5 2007), it is evident from the face of the Complaint that the amount of recovery sought
 6 by each Plaintiff exceeds \$75,000.⁵

7 19. Second, because each individual Plaintiff's claim exceeds \$75,000, the
 8 aggregate amount in controversy for putative coordinated litigation, which embraces
 9 the claims of more than 500 individuals, necessarily exceeds \$5,000,000, since
 10 \$75,000 multiplied by 500 is \$37,500,000.

11 20. Accordingly, the amount-in-controversy requirement is satisfied.

12 **C. The Diversity Requirement Is Satisfied**

13 21. The diversity requirements for mass action removal have been satisfied.
 14 *See* 28 U.S.C. § 1332(d)(2)(A). While diversity removal normally requires complete
 15 diversity between plaintiffs and defendants, for removal of a mass action, only
 16 "minimal diversity" is required — i.e., that at least one plaintiff be diverse from one
 17 defendant. *See id.* This requirement is readily satisfied here: Plaintiff Shirley
 18 Thomas, a citizen of California (Compl. ¶ 14), is diverse from Lilly, a citizen of
 19 Indiana. (*Id.* ¶ 25.)

20 22. Accordingly, all the jurisdictional requirements of mass action removal
 21 are satisfied.

22
 23
 24
 25 ⁵ Removing Defendant notes that it is not required to concede that Plaintiffs
 26 are, in fact, entitled to recover more than \$75,000. *See Kelderman v. Remington*
 27 *Arms Co.*, 734 F. Supp. 1527, 1528 (S.D. Iowa 1990) (rejecting a plaintiff's attempt
 28 to "place [a] defendant in the awkward position of embracing a concession on the
 important issue of damages," to establish jurisdiction, noting that a "defendant need
 not go that far"). Indeed, Removing Defendant specifically denies that Plaintiffs are
 entitled to recover any damages.

**THIS CASE IS REMOVABLE UNDER FEDERAL QUESTION AND
SUPPLEMENTAL JURISDICTION**

23. This action is removable under the CAFA “mass action” provisions alone. However, as a *separate and independent basis for removal*, this action is also properly removable under 28 U.S.C. §§ 1331 and 1367. Plaintiffs’ claims against Generic Defendants are removable because they necessarily raise a substantial and disputed question of federal law. In addition, all remaining claims are removable subject to the Court’s supplemental jurisdiction.

**A. Plaintiffs’ Claims Against Generic Defendants Are Removable
Because They Necessarily Raise Substantial Issues of Federal Law**

24. Plaintiffs’ claims against Generic Defendants are removable because they necessarily raise a substantial and disputed question of federal law. The Supreme Court has held that state-law claims are removable under federal question jurisdiction pursuant to 28 U.S.C. § 1331 where they “necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314, 125 S. Ct. 2363, 2368, 162 L. Ed. 2d 257, 265 (2005).

25. Federal jurisdiction exists where a state law claim necessarily involves the construction or application of federal law. *See e.g., D’Alessio v. N.Y. Stock Exch., Inc.*, 258 F.3d 93, 99 (2d Cir. 2001) (“[A] case is deemed ‘to arise under’ federal law ‘where the vindication of a right under state law necessarily turn[s] on some construction of federal law.’” (alteration in original) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 9, 103 S.Ct. 2841 (1983))).

26. In addition, this Court has original and removal jurisdiction of civil actions, such as this one, that arise “under the Constitution, laws, or treaties of the United States.” 28 U.S.C. §§ 1331, 1441(a). Among the civil actions that “arise under” federal law are “state law claims that implicate significant federal issues.”

1 *Grable*, 545 U.S. at 312. Such claims capture the “commonsense notion that a
2 federal court ought to be able to hear claims recognized under state law that
3 nonetheless turn on substantial questions of federal law, and thus justify resort to the
4 experience, solicitude, and hope of uniformity that a federal forum offers on federal
5 issues.” *Id.*

6 27. Thus, federal question jurisdiction also exists where, as here, a “state
7 law claim necessarily raise[s] a stated federal issue, actually disputed and substantial,
8 which a federal forum may entertain without disturbing any congressionally approved
9 balance of federal and state judicial responsibilities.” *Id.* at 314.

10 28. The claims asserted in Plaintiffs’ Complaint meet both of these
11 standards for federal question jurisdiction. As the Eastern District of New York has
12 recently held, claims against generic defendants are removable under *Grable* where,
13 like Plaintiffs’ claims here, they allege that the generic defendants are liable in
14 failure-to-warn due to breach of their federal duty to use the same FDA-approved
15 labeling as the brand defendants. *Bowdrie v. Sun Pharm. Indus. Ltd.*, No. 12-CV-853
16 (WFK) (MDG), 2012 WL 5465994 (E.D.N.Y. Nov. 9, 2012).

17 29. As recognized by the Supreme Court in *PLIVA, Inc. v. Mensing*, 131 S.
18 Ct. 2567, 180 L. Ed. 2d 580 (2011), generic defendants are prohibited by federal law
19 from independently changing the labeling for their products, but are instead required
20 by federal law to use labeling identical to the FDA-approved labeling used by the
21 brand defendant. *See id.*, 131 S. Ct. at 2578. The plaintiffs in *Bowdrie* alleged that
22 the generic defendants were liable on state-law failure-to-warn claims because they
23 breached their duty to employ the same labeling as the brand defendants. 2012 WL
24 5465994, at *1.

25 30. The *Bowdrie* court held that the plaintiffs’ state-law claims that generic
26 defendants “failed to meet their ongoing duty of sameness by failing to . . . update
27 their FDA-approved labeling to mirror updated [brand drug] labeling . . . necessarily
28 raise[d] a federal question.” 2012 WL 5465994, at *3 (“A question of federal law is

1 a necessary element of Plaintiffs' state law causes of action."). The court further held
2 that this federal question was substantial because it:

3 goes far beyond simply incorporating a federal standard into a state law
4 cause of action. To the extent they invoke the "federal duty of
5 sameness," Plaintiffs' causes of action implicate the labeling
6 requirements for generic drug manufacturers nationwide. The federal
7 question present in this case involves a responsibility that is in the first
8 instance, and primarily, federal: regulation of the manufacture,
9 marketing, and distribution of drugs.

10 *Id.* at *4. Thus, the court held, the Plaintiffs' claims were removable under federal
11 question jurisdiction under the rule of *Grable*. *Id.* at *3.

12 31. The same reasoning applies to this action, where, just like in *Bowdrie*,
13 Plaintiffs claim that Generic Defendants are liable in failure-to-warn due to their
14 alleged failure to update their labeling to conform to the brand. (*See* Compl. ¶ 6-7.)

15 32. It is irrelevant that Plaintiffs may not have intended to plead a state law
16 cause of action that raises a substantial and disputed issue of federal law to establish a
17 basis for jurisdiction arising from a federal question. In *Grable*, the Supreme Court
18 held that federal question jurisdiction exists when a state law cause of action raises a
19 substantial federal question that is in dispute. *Grable*, 545 U.S. at 316-20. Plaintiffs
20 may not avoid this result through artful pleading. *See Rivet v. Regions Bank*, 522 U.S.
21 470, 475, 118 S. Ct. 921, 925, 139 L. Ed. 2d 912, 919 (1998) (holding that "[i]f a
22 court concludes that plaintiff has 'artfully pleaded' claims" by omitting to plead
23 federal questions, "it may uphold removal even though no federal question appears
24 on the face of the plaintiff's complaint").

25 33. Accordingly, Plaintiffs' failure-to-update claims against Generic
26 Defendants are properly removable under federal question jurisdiction pursuant to the
27 rule of *Grable* because they necessarily (indeed, affirmatively) raise a substantial,
28 disputed issue of federal law.

B. Supplemental Jurisdiction Extends to All Other Claims

34. This Court has “supplemental jurisdiction over all other claims that are so related to claims in the action within [the Court’s] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). As set forth above, Plaintiffs’ claims against Generic Defendants are within the Court’s original jurisdiction pursuant to 28 U.S.C. § 1331. On an individual, per-Plaintiff basis, all other claims in this action arise out of the same case or controversy in that they seek relief in connection with personal injuries allegedly due to the ingestion of a propoxyphene-containing pain medication.

35. Accordingly, there is supplemental jurisdiction over all other claims in this action.

THIS CASE IS REMOVABLE UNDER DIVERSITY JURISDICTION

36. This Court has subject-matter jurisdiction over this action under the CAFA “mass action” provisions alone. However, as a *separate and independent basis for subject-matter jurisdiction*, this case is removable pursuant to 28 U.S.C. §§ 1332 and 1441 because this is a civil action in which the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest, and is between citizens of different States. Initially, the amount-in-controversy requirement is satisfied for the reasons set forth in the mass action section above. Further, although Plaintiffs have improperly failed to allege the citizenship of any Plaintiff other than Shirley Thomas, Removing Defendant states, upon information and belief and subject to appropriate additional information to be obtained, that complete diversity exists in this case pursuant to the theories of fraudulent joinder and fraudulent misjoinder. Removing Defendant has asserted diversity jurisdiction at this time in order to avoid waiver of this basis for removal in connection with their removal of this action under the CAFA mass action provisions set forth above.

1 **A. No Manufacturing Defendant Is a California Citizen**

2 37. The Defendants allegedly involved in the manufacture, marketing,
3 and/or sale of prescription pain medications containing propoxyphene are citizens of
4 Alabama, Delaware, Indiana, Ireland, Kentucky, Maryland, Massachusetts, Missouri,
5 Nevada, New Jersey, North Carolina, Pennsylvania, and West Virginia, and are thus
6 completely diverse from Plaintiffs.

7 a. Removing Defendant is informed and believes that Defendant Eli
8 Lilly and Company is incorporated under the laws of Indiana and has its
9 principal place of business in Indiana, and is therefore a citizen of
10 Indiana for purposes of diversity.

11 b. Removing Defendant is informed and believes that Defendant
12 aaiPharma Inc. is incorporated under the laws of Delaware and has its
13 principal place of business in North Carolina, and is therefore a citizen
14 of Delaware and North Carolina for purposes of diversity.

15 c. Removing Defendant is informed and believes that Defendant
16 AAIPharma LLC is incorporated under the laws of Delaware and has its
17 principal place of business in North Carolina, and is therefore a citizen
18 of Delaware and North Carolina for purposes of diversity.

19 d. Removing Defendant is informed and believes that Defendant
20 AAI Development Services Inc. is incorporated under the laws of
21 Delaware and has its principal place of business in North Carolina, and
22 is therefore a citizen of Delaware and North Carolina for purposes of
23 diversity.

24 e. Removing Defendant is informed and believes that Defendant
25 NeoSan Pharmaceuticals Inc. is incorporated under the laws of Delaware
26 and has its principal place of business in North Carolina, and is therefore
27 a citizen of Delaware and North Carolina for purposes of diversity.
28

1 f. Removing Defendant is informed and believes that Defendant
2 Xanodyne Pharmaceuticals, Inc. is incorporated under the laws of
3 Delaware and has its principal place of business in Kentucky, and is
4 therefore a citizen of Delaware and Kentucky for purposes of diversity.

5 g. Removing Defendant is informed and believes that Defendant
6 Qualitest Pharmaceuticals, Inc. is incorporated under the laws of
7 Alabama and has its principal place of business in Alabama, and is
8 therefore a citizen of Alabama for purposes of diversity.

9 h. Removing Defendant is informed and believes that Defendant
10 Vintage Pharmaceuticals, Inc. is incorporated under the laws of Alabama
11 and has its principal place of business in Alabama, and is therefore a
12 citizen of Alabama for purposes of diversity.

13 i. Removing Defendant is informed and believes that Defendant
14 Propst Distribution, Inc. is incorporated under the laws of Alabama and
15 has its principal place of business in Alabama, and is therefore a citizen
16 of Alabama for purposes of diversity.

17 j. Removing Defendant is informed and believes that Defendant
18 Brenn Distribution Inc. is incorporated under the laws of Alabama and
19 has its principal place of business in Alabama, and is therefore a citizen
20 of Alabama for purposes of diversity.

21 k. Removing Defendant is informed and believes that Defendant
22 Brenn Manufacturing, Inc. is incorporated under the laws of Alabama
23 and has its principal place of business in Alabama, and is therefore a
24 citizen of Alabama for purposes of diversity.

25 l. Removing Defendant is informed and believes that Defendant
26 Cornerstone Biopharma, Inc. is incorporated under the laws of Nevada
27 and has its principal place of business in North Carolina, and is therefore
28 a citizen of Nevada and North Carolina for purposes of diversity.

1 m. Removing Defendant is informed and believes that Defendant
2 Cornerstone Biopharma Holdings, Inc. is incorporated under the laws of
3 Delaware and has its principal place of business in North Carolina, and
4 is therefore a citizen of Delaware and North Carolina for purposes of
5 diversity.

6 n. Removing Defendant is informed and believes that Defendant
7 Teva Biopharmaceuticals, Inc. is incorporated under the laws of
8 Delaware and has its principal place of business in Maryland, and is
9 therefore a citizen of Delaware and Maryland for purposes of diversity.

10 o. Removing Defendant Teva Pharmaceuticals USA, Inc. is
11 incorporated under the laws of Delaware and has its principal place of
12 business in Pennsylvania, and is therefore a citizen of Delaware and
13 Pennsylvania for purposes of diversity.

14 p. Removing Defendant is informed and believes that Defendant
15 Mylan Pharmaceuticals, Inc. is incorporated under the laws of West
16 Virginia and has its principal place of business in West Virginia, and is
17 therefore a citizen of West Virginia for purposes of diversity.

18 q. Removing Defendant is informed and believes that Defendant
19 Mylan, Inc. is incorporated under the laws of Pennsylvania and has its
20 principal place of business in Pennsylvania, and is therefore a citizen of
21 Pennsylvania for purposes of diversity.

22 r. Removing Defendant is informed and believes that Defendant
23 Covidien PLC is incorporated under the laws of Ireland, and is therefore
24 a citizen of Ireland for purposes of diversity.

25 s. Removing Defendant is informed and believes that Defendant
26 Covidien Inc. is incorporated under the laws of Delaware and has its
27 principal place of business in Massachusetts, and is therefore a citizen of
28 Delaware and Massachusetts for purposes of diversity.

1 t. Removing Defendant is informed and believes that Defendant
2 Mallinckrodt Inc. is incorporated under the laws of Delaware and has its
3 principal place of business in Missouri, and is therefore a citizen of
4 Delaware and Missouri for purposes of diversity.

5 u. Removing Defendant is informed and believes that Defendant
6 Watson Pharmaceuticals, Inc. is incorporated under the laws of Nevada,
7 and has its principal place of business in New Jersey, and is therefore a
8 citizen of Nevada and New Jersey for purposes of diversity.

9 v. Defendant Endo Pharmaceuticals Holdings Inc. is incorporated
10 under the laws of Delaware and has its principal place of business in
11 Pennsylvania and is therefore a citizen of Delaware and Pennsylvania
12 for purposes of diversity.

13 w. Defendant Endo Pharmaceuticals Inc. is incorporated under the
14 laws of Delaware and has its principal place of business in Pennsylvania
15 and is therefore a citizen of Delaware and Pennsylvania for purposes of
16 diversity.

17 x. Defendant Generics International (US Parent), Inc. is incorporated
18 under the laws of Delaware and has its principal place of business in
19 Alabama, and is therefore a citizen of Delaware and Alabama for
20 purposes of diversity.

21 y. Defendant Generics International (US), Inc. is incorporated under
22 the laws of Delaware and has its principal place of business in Alabama,
23 and is therefore a citizen of Delaware and Alabama for purposes of
24 diversity.

25 z. Defendant Vintage Pharmaceuticals, LLC is a limited liability
26 company and therefore has the citizenship of its members for purposes
27 of diversity. Defendant Generics International (US), Inc. is the sole
28 member of Vintage Pharmaceuticals, LLC, and therefore, for diversity

1 purposes, Vintage Pharmaceuticals, LLC is deemed a citizen of
2 Delaware and Alabama.

3 aa. Defendant Generics Bidco I, LLC is a limited liability company
4 and therefore has the citizenship of its members for purposes of
5 diversity. Generics International (US), Inc. is the sole member of
6 Generics Bidco I, LLC, and therefore, for diversity purposes, Generics
7 Bidco I, LLC is deemed a citizen of Delaware and Alabama.

8 bb. Defendant Generics Bidco II, LLC is a limited liability company
9 and therefore has the citizenship of its members for purposes of
10 diversity. Generics International (US), Inc. is the sole member of
11 Generics Bidco II, LLC, and therefore, for diversity purposes, Generics
12 Bidco II, LLC is deemed a citizen of Delaware and Alabama.

13 **B. McKesson Is Fraudulently Joined**

14 38. Only McKesson, an alleged “Distributor Defendant” in this action, is
15 purportedly a citizen of California, because McKesson is allegedly incorporated
16 under the laws of Delaware and has its principal place of business in California. (*See*
17 *Compl.* ¶ 18.) As set forth below, McKesson has been fraudulently joined to this
18 action, and thus its citizenship should be disregarded for purposes of diversity.

19 39. Under the fraudulent-joinder doctrine, a court should disregard the
20 citizenship of a defendant where, as here, there is “no possibility that the plaintiff will
21 be able to establish a cause of action in state court against the alleged sham
22 defendant.” *Taylor v. Jeppesen DataPlan, Inc.*, No. C 10-1920 SBA, 2010 U.S. Dist.
23 LEXIS 106160, at *5 (N.D. Cal. Sept. 27, 2010) (internal quotation marks and
24 citation omitted). Non-diverse defendants are fraudulently joined – and their
25 presence in the lawsuit is thus ignored for purposes of determining the propriety of
26 removal – where no viable cause of action has been stated against them. *See Morris*
27 *v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001); *TPS Utilicom Servs.,*
28 *Inc. v. AT&T Corp.*, 223 F. Supp. 2d 1089, 1100 (C.D. Cal. 2002); *United Computer*

1 *Sys., Inc. v. AT & T Corp.*, 298 F.3d 756, 761 (9th Cir. 2002); *see also Badon v. RJR*
 2 *Nabisco, Inc.*, 224 F.3d 382, 393 (5th Cir. 2000) (pursuant to the fraudulent-joinder
 3 doctrine, a court should disregard the citizenship of an in-state defendant where, as
 4 here, “there is no reasonable basis for predicting that plaintiffs might establish
 5 liability . . . against the in-state defendants”); *Great Plains Trust Co. v. Morgan*
 6 *Stanley Dean Witter & Co.*, 313 F.3d 305, 312 (5th Cir. 2002) (affirming district
 7 court’s finding of fraudulent joinder and recognizing that a “reasonable” basis to
 8 predict that a plaintiff could prevail on his or her claims against the in-state
 9 defendants requires more than a “theoretical” basis). That is the case here, for there
 10 is no possibility “that the plaintiff[s] will be able to establish [their] cause[s] of
 11 action in state court against” McKesson. *Taylor*, 2010 U.S. Dist. LEXIS 106160, at
 12 *5 (citation omitted).

13 40. All of Plaintiffs’ claims against McKesson – both those that challenge
 14 the labeling for propoxyphene and those that challenge its design – fail as a matter of
 15 law. In *Mensing*, the Supreme Court held that state-law claims challenging the
 16 labeling of a generic prescription medication are preempted, because federal law
 17 requires generic defendants to use the same labeling as the branded manufacturer and
 18 prohibits those generic defendants from independently changing the FDA-approved
 19 labeling. 131 S. Ct. at 2578.⁶ As explained by the court in *In re Fosamax*
 20 *(Alendronate Sodium) Products Liability Litigation (No. II)*, MDL No. 2243 (JAP-
 21 LHG), 2012 WL 181411 (D.N.J. Jan. 17, 2012), the Supreme Court’s holding in
 22 *Mensing* also preempts all failure-to-warn claims against distributors of prescription
 23

24
 25 ⁶ The Ninth Circuit has recognized that a dispositive affirmative defense –
 26 here, federal preemption – may serve as the basis for a showing of fraudulent joinder.
 27 *See Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313 (9th Cir. 1998). That showing is not
 28 barred by the common defense rule, which applies “only when the common defense
 asserted would be equally dispositive as to all of the defendants.” *McDonal v. Abbott*
Labs., 408 F.3d 177, 184 (5th Cir. 2005). Here, *Mensing* preemption is not
 dispositive as to all Defendants and it may apply in different ways with respect to
 Generic Defendants and distributors such as McKesson based on the federal law and
 regulations applicable to each.

1 medications like McKesson, because such distributors are also not authorized to
 2 change product labeling under federal law. *Id.* at *3; *accord Stevens v. Cmty. Health*
 3 *Care, Inc.*, 29 Mass. L. Rptr. 153 (Mass. Super. Ct. Essex County 2011).

4 41. Likewise, Plaintiffs' claims against McKesson challenging the product's
 5 design are barred because a distributor of prescription medications, like a generic
 6 defendant, is no more free to change the design and composition of the FDA-
 7 approved products it sells than it is to change the labeling, as numerous courts have
 8 recognized. *See In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, MDL
 9 No. 2226, 2012 WL 718618, at *3 (E.D. Ky. Mar. 5, 2012) (dismissing as preempted
 10 all claims "based on the allegedly defective design of the drug, which the Generic
 11 Defendants, bound by their 'ongoing federal duty of sameness,' were powerless to
 12 change" (citation omitted)); *accord, e.g., In re Pamidronate Prods. Liab. Litig.*, 842
 13 F. Supp. 2d 479, 484 (E.D.N.Y. 2012); *Fosamax*, 2012 WL 181411, at *6; *Stevens v.*
 14 *Pliva, Inc.*, No. 6:10-0886, 2011 WL 6224569, at *2 (W.D. La. Nov. 15, 2011).
 15 Thus, because both of Plaintiffs' claims against McKesson fail as a matter of law,
 16 McKesson is fraudulently joined and its purported California citizenship does not
 17 preclude removal.

18 42. In addition, Plaintiffs' design defect claims against McKesson fail as a
 19 matter of California law because California has long held that strict liability design
 20 defect claims are improper with respect to prescription medications. *See Brown v.*
 21 *Super. Ct.*, 44 Cal. 3d 1049 (1988). In *Brown*, the California Supreme Court adopted
 22 the rule of the Restatement (Second) of Torts § 402A comment k with respect to *all*
 23 prescription medications, holding that liability for such medications was to be
 24 determined "under general principles of negligence, and for failure to warn of known
 25 or reasonably knowable side effects," *id.* at 1069 n.12, and thereby "granting
 26 immunity from strict liability to all such drugs." *Id.* at 1069 n.11; *see also*
 27 Restatement (Second) of Torts § 402A cmt. k (stating that "[t]he seller of such
 28 products [here, prescription medications] . . . is not to be held to strict liability for

1 unfortunate consequences attending their use” provided “they are properly prepared
 2 and marketed, and proper warning is given”); *Skinner v. Warner-Lambert Co.*, No.
 3 CV 03-1643-R(RZX), 2003 WL 25598915, at *1 (C.D. Cal. Apr. 28, 2003)
 4 (“Pursuant to comment k . . . and California law following comment k, a distributor
 5 of a prescription drug is not subject to strict liability.”). Accordingly, based on the
 6 conclusive holding of the California Supreme Court in *Brown*, Plaintiffs’ strict
 7 liability design defect claims against McKesson fail as a matter of law.

8 43. But even further, and apart from the legal viability of Plaintiffs’ claims
 9 against McKesson, the fraudulent joinder of McKesson is obvious based on the
 10 insufficiency of Plaintiffs’ pleadings. *See, e.g., Brown v. Allstate Ins.*, 17 F. Supp. 2d
 11 1134, 1137 (S.D. Cal. 1998) (finding in-state defendants fraudulently joined where
 12 “no material allegations against [the in-state defendants] are made”); *Lyons v. Am.*
 13 *Tobacco Co.*, No. Civ. A. 96-0881-BH-S, 1997 WL 809677, at *5 (S.D. Ala. Sept.
 14 30, 1997) (holding that there is “no better admission of fraudulent joinder of [the
 15 resident defendants]” than the failure of the plaintiff “to set forth any specific factual
 16 allegations” against them). To state a proper claim for relief, Plaintiffs must allege
 17 “enough facts to state a claim to relief that is plausible on its face” and allow the
 18 court to draw the reasonable inference that the defendant is liable for the misconduct
 19 alleged. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974,
 20 167 L. Ed. 2d 929, 949 (2007). Legal conclusions and threadbare recitals of
 21 elements, supported by mere conclusion, simply do not suffice. *Ashcroft v. Iqbal*,
 22 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009). This Court
 23 is “not bound to accept as true a legal conclusion couched as a factual allegation.”
 24 *Twombly*, 550 U.S. at 555 (citation omitted). Rather, Rule 8 “contemplate[s] the
 25 statement of circumstances, occurrences, and events in support of the claim
 26 presented.” *Id.* at 556 (citation omitted). Thus, pleadings – such as Plaintiffs’
 27 Complaint here – which fail to set forth factual allegations to support asserted legal
 28 conclusions should be dismissed for failure to state a claim. *Twombly*, 550 U.S. at

555; *see also Iqbal*, 556 U.S. 662, 678-79 (“Rule 8 ... does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.”).

44. Here, Plaintiffs offer only conclusory allegations that McKesson distributed the pain medications containing propoxyphene that they allegedly ingested. These assertions are based solely on Plaintiffs’ vague factual allegations, “[u]pon information and belief and subject to discovery of information within the exclusive control of defendants,” that McKesson “maintains comprehensive distribution agreements with major retail pharmacies including ... CVS, Wal-Mart, and Rite Aid.” (Compl. ¶ 20.) Yet Plaintiffs *never allege* that they obtained their prescriptions from any of these pharmacies. Moreover, as Plaintiffs admit, McKesson is only “one of” the national distributors of prescription medications (*id.* ¶ 22), and it is not even the exclusive distributor of prescription medications for the pharmacies identified by Plaintiffs. For example, press releases reveal that in 2009, both McKesson *and its competitor Cardinal Health* renewed national pharmaceutical distribution agreements with CVS.⁷ In light of the presence of other distributors, who are not joined as defendants, Plaintiffs have failed to allege facts giving rise to a plausible claim of causation with respect to McKesson, thus leading to the “suspicion that McKesson could have been added to defeat diversity removal.” *See Camara v. Bayer Corp.*, No. C 09-06084 WHA, 2010 WL 902780, at *3 (N.D. Cal. Mar. 9, 2010) (staying case pending transfer to MDL and declining to decide motion to

⁷ Compare Cardinal Health Renews Distribution Agreement with CVS Caremark, Cardinal Health (July 6, 2009), <http://cardinalhealth.mediaroom.com/index.php?s=43&item=277> (“Cardinal Health today announced it has renewed its distribution agreement with CVS Caremark to supply pharmaceuticals to its national network of retail pharmacies through mid-2013.”), with McKesson Renews Pharmaceutical Distribution Agreement with CVS Caremark, McKesson (July 6, 2009), http://www.mckesson.com/en_us/McKesson.com/About%2BUs/Newsroom/Press%2BReleases%2BArchives/2009/McKesson%2BRenews%2BPharmaceutical%2BDistribution%2BAgreement%2Bwith%2BCVS%2BCaremark.html (“McKesson Corporation . . . today announced that it has renewed its current distribution agreement to supply CVS Caremark with branded and generic drugs.”).

1 remand because plaintiff's complaint failed "to clearly explain the role of McKesson
2 in the injury of these specific plaintiffs"). *Id.* Plaintiffs' allegations against
3 McKesson simply do not meet the *Iqbal/Twombly* pleading standard.

4 45. For all these reasons, McKesson is fraudulently joined, and its
5 citizenship must be disregarded for jurisdictional purposes.

6 C. Plaintiffs Are Fraudulently Misjoined

7 46. Removing Defendant states that, upon information and belief, Plaintiffs
8 are citizens of states other than Alabama, Delaware, Indiana, Kentucky, Maryland,
9 Massachusetts, Missouri, Nevada, North Carolina, Pennsylvania, New Jersey, and
10 West Virginia, and the properly joined parties are therefore completely diverse.
11 Nevertheless, to the extent certain Plaintiffs are citizens of the same state as any
12 defendant other than McKesson, removal is not barred due to lack of complete
13 diversity because Plaintiffs have fraudulently misjoined the distinct personal injury
14 claims of 39 Plaintiffs (38 of which also assert distinct personal injury claims of
15 deceased individuals) for the purpose of frustrating diversity. Removing Defendant
16 states that but for Plaintiffs' fraudulent misjoinder of their varying claims, the vast
17 majority of Plaintiffs would be diverse from Defendants and their claims satisfy the
18 requirements for diversity jurisdiction. Accordingly, the Court should sever
19 Plaintiffs' claims by Plaintiff family and should find that it has diversity jurisdiction
20 over all Plaintiff families as to whom complete diversity would be satisfied upon
21 severance.

22 47. The fraudulent misjoinder doctrine is intended to ensure that a
23 defendant's statutory right to remove cannot be subverted by procedural
24 gamesmanship, such as the type engaged in by Plaintiffs here. *See Tapscott v. MS*
25 *Dealer Serv. Corp.*, 77 F.3d 1353, 1360 (11th Cir. 1996) (fraudulent-misjoinder
26 doctrine applies where plaintiffs' claims are "egregious[ly]" misjoined to defeat
27 federal jurisdiction and "have no real connection" to one another), *abrogated on*
28 *other grounds by Cohen v. Office Depot, Inc.*, 204 F.3d 1069 (11th Cir. 2000); *see*

1 also *In re Benjamin Moore & Co.*, 318 F.3d 626, 630-31 (5th Cir. 2002) (noting “the
 2 force of the *Tapscott* principle that fraudulent misjoinder of plaintiffs is no more
 3 permissible than fraudulent misjoinder of defendants to circumvent diversity
 4 jurisdiction”); *Greene v. Wyeth*, 344 F. Supp. 2d 674, 684-85 (D. Nev. 2004) (“[T]his
 5 Court agrees with the Fifth and Eleventh Circuits that the [fraudulent misjoinder] rule
 6 is a logical extension of the established precedent that a plaintiff may not fraudulently
 7 join a defendant in order to defeat diversity jurisdiction in federal court”) (footnotes
 8 omitted). Numerous courts from around the country have affirmed the validity of the
 9 fraudulent misjoinder doctrine as a basis for removal.⁸

10 48. Under the fraudulent misjoinder doctrine, federal diversity jurisdiction
 11 exists “where diversity is destroyed only through misjoinder of parties.” *Asher v.*
 12 *3M*, No. 04-CV-522-KKC, 2005 U.S. Dist. LEXIS 42266, at *37 (E.D. Ky. June 30,
 13 2005). “Misjoinder of parties occurs when a party fails to satisfy the conditions for
 14 permissive joinder under Rule 20(a).” *In re Rezulin Prods. Liab. Litig.*, 168 F. Supp.
 15 2d 136, 144 (S.D.N.Y. 2001). Accordingly, fraudulent misjoinder applies where, as
 16 in this case, Plaintiffs have improperly joined different claims that did not arise “out
 17 of the same transaction, occurrence, or series of transactions or occurrences” and give
 18 rise to common questions of law or fact. *See* Fed. R. Civ. P. 20(a); Cal. Code Civ.

19
 20 ⁸ *See, e.g., Augustine v. Emp’rs. Mut. Cas. Co.*, No. 2:08-cv-1102, 2010 U.S.
 21 Dist. LEXIS 126431, at *49 (E.D. La. Nov. 30, 2010); *WIAV Networks, LLC v.*
 22 *3COM Corp.*, No. C 10-03448 WHA, 2010 U.S. Dist. LEXIS 110957, at *19-20
 23 (N.D. Cal. Oct. 1, 2010); *Bishop v. Sturdivant*, No. 4:10CV49TSL-JCS, 2010 U.S.
 24 Dist. LEXIS 79992, at *8 (S.D. Miss. Aug. 6, 2010); *Hughes v. Sears, Roebuck &*
 25 *Co.*, No. 2:09-CV-93, 2009 WL 2877424, at *5-6 (N.D. W. Va. Sept. 3, 2009);
 26 *Willingham v. State Farm Ins. Co.*, No. 2:09-CV-59-SA-SAA, 2009 U.S. Dist.
 27 LEXIS 76639, at *11 (N.D. Miss. Aug. 27, 2009); *Sutton v. Davol, Inc.*, 251 F.R.D.
 28 500, 505 (E.D. Cal. 2008); *Milliet v. Liberty Mut. Ins. Co.*, No. 07-7443 SECTION
 “N” (4), 2008 U.S. Dist. LEXIS 2344, at *7-8 (E.D. La. Jan. 11, 2008); *Jones v. State*
Farm Fire & Cas. Co., No. 06-7994 SECTION: “K”(2), 2007 U.S. Dist. LEXIS
 102293, at *4 (E.D. La. Feb. 28, 2007); *Grennell v. W. S. Life Ins. Co.*, 298 F. Supp.
 2d 390, 396 (S.D. W. Va. 2004); *Reed v. Am. Med. Sec. Grp., Inc.*, 324 F. Supp. 2d
 798, 803-05 (S.D. Miss. 2004); *Burns v. W. S. Life Ins. Co.*, 298 F. Supp. 2d 401, 403
 (S.D. W. Va. 2004); *Madison Materials Co. v. St. Paul Fire & Marine Ins. Co.*, No.
 3:04-CV-14 WS, 2004 U.S. Dist. LEXIS 31111, at *13 (S.D. Miss. Sept. 14, 2004);
Smith v. Nationwide Mut. Ins. Co., 286 F. Supp. 2d 777, 781 (S.D. Miss. 2003).

1 Proc. § 378; *see also Adams v. I-Flow Corp.*, CV09-09550 R SSX, 2010 WL
2 1339948, at *8 (C.D. Cal. Mar. 30, 2010) (“The California rule on joinder of parties
3 plaintiff is practically identical to [the federal rule].”). Where fraudulent misjoinder
4 applies, a court must sever the improperly joined claims into separate and distinct
5 cases.

6 49. Here, the claims of these 39 different Plaintiffs (38 of which also assert
7 distinct personal injury claims of deceased individuals) have been fraudulently
8 misjoined because they do not arise out of the same transaction, occurrence, or series
9 of transactions or occurrences.

10 50. Among other differences with respect to the 39 Plaintiffs (38 of which
11 also assert distinct personal injury claims of deceased individuals) in this action, each
12 Plaintiff (or Plaintiff family) necessarily has a distinct medical history, including a
13 treatment regimen, prior history of injury, genetic risk factors, and prescriptions of
14 propoxyphene by different healthcare providers. Plaintiffs purchased propoxyphene
15 pain products from different pharmacies, for different purposes, and after different
16 conversations with their individual healthcare providers. They likely would have
17 used propoxyphene pain products at different doses, for different durations, for
18 different conditions, and during different years. Plaintiffs’ extremely broad
19 allegations of “cardiovascular injuries” can encompass a wide variety of conditions,
20 each of which is affected in different ways by a multitude of different causal factors.

21 51. Finally, to the extent additional information shows that Plaintiffs reside
22 and allegedly incurred injuries in different states, the law of each Plaintiff’s home
23 state is likely to govern his or her claims. *See Boaz v. Boyle & Co.*, 40 Cal. App. 4th
24 700, 713, 46 Cal. Rptr. 2d 888 (1995) (“[T]he lack of a significant California
25 connection [the circumstances giving rise to plaintiffs’ claims] provide[s] strong
26 reasons to believe that a California court would look to the substantive law of
27 [plaintiffs’ home state].”). As such, Plaintiffs’ claims would implicate the laws of
28

1 their different home states, and each of these states has unique and conflicting laws
2 regarding products liability claims.

3 52. Numerous courts have found fraudulent misjoinder under the precise
4 circumstances presented here. Those courts have recognized that claims by
5 pharmaceutical product-liability plaintiffs – like those in this case – are highly
6 individualized and cannot be joined to defeat jurisdiction, even where the plaintiffs
7 allegedly used the same product. *See, e.g., In re Fosamax*, 2012 WL 1118780, at *4
8 (finding fraudulent misjoinder where plaintiffs “allege such unspecific injuries as to
9 make it impossible to determine how the Plaintiffs share any connection” and “given
10 the complicated causation questions that pervade drug product liability claims,
11 Plaintiffs’ claims will require divergent questions of law and fact”); *Weaver v. Am.*
12 *Home Prods. Corp. (In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine)*
13 *Prods. Liab. Litig.*), 294 F. Supp. 2d 667, 679 (E.D. Pa. 2003) (finding that plaintiffs
14 were fraudulently misjoined because “the claims of the pharmaceutical plaintiffs who
15 had drugs prescribed by different doctors for different time periods do not arise out of
16 the same ‘transaction, occurrence, or series of transactions or occurrences’”) (quoting
17 Fed. R. Civ. P. 20(a)); *In re Baycol Prods. Litig.*, No. 03-2931, 2003 WL 22341303,
18 at *3 (D. Minn. 2003) (holding that a plaintiff in a pharmaceutical product-liability
19 action had “been fraudulently [mis]joined with the other plaintiffs, warranting
20 severance and remand” of that plaintiff’s claims and denying plaintiffs’ motion to
21 remand); *In re Rezulin*, 168 F. Supp. 2d at 146 (prescription drug plaintiffs’ claims
22 were fraudulently misjoined where they did not “allege that they received Rezulin
23 from the same source or that they were exposed to Rezulin for similar periods of
24 time” and where they alleged “different injuries”); *Chaney v. Gate Pharms. (In re*
25 *Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*), No.
26 Civ.A. 98-20478, 1999 WL 554584, at *3 (E.D. Pa. July 16, 1999) (pleading went
27 “well beyond mere misjoinder” where plaintiffs “attempt[ed] to join persons from
28 seven different states into one civil action who have absolutely no connection to each

1 other except that they each ingested fenfluramine, Redux (dexfenfluramine),
2 phentermine or some combination of those drugs”).

3 53. Numerous federal courts have also granted motions to sever in similar
4 cases. *See, e.g., Boschert v. Pfizer, Inc.*, No. 4:08-CV-1714, 2009 U.S. Dist. LEXIS
5 41261, at *7-8 (E.D. Mo. May 14, 2009) (granting motion to sever claims of four
6 plaintiffs allegedly injured as a result of using smoking-cessation medication
7 Chantix, holding that, “the mere fact [that] four plaintiffs took Chantix at some point
8 in time and suffered some sort of mental or behavioral side-effect is not enough of a
9 logical or factual connection to satisfy the same transaction or occurrence
10 requirement.”); *Cumba v. Merck & Co.*, No. 08-CV-2328, 2009 U.S. Dist. LEXIS
11 41132, at *4-5 (D.N.J. May 12, 2009) (granting motion to sever claims of 49
12 plaintiffs who allegedly “took the drug Vytarin and . . . [allegedly] sustained broadly
13 similar injuries as a result thereof” because their claims were based on disparate
14 facts); *In re Seroquel Prods. Liab. Litig.*, No. 6:06-md-1769, 2007 U.S. Dist. LEXIS
15 17603, at *115-22 (M.D. Fla. Mar. 7, 2007) (severing claims of multiple plaintiffs
16 alleging injury from use of Seroquel and ordering each to file an individual complaint
17 and pay the court’s full filing fee).

18 54. As in the above-cited cases, Plaintiffs’ claims here do not arise out of the
19 same transaction, occurrence, or series of transactions; nor do they give rise to
20 common questions of law or fact. Thus, the claims of each Plaintiff family should be
21 severed into separate actions and the Court should determine that it has diversity
22 jurisdiction over the remaining Plaintiff families as to whom complete diversity
23 exists.

24 55. Moreover, subject to obtaining additional information regarding the
25 basic details of Plaintiffs’ claims, Removing Defendant reserves its right to assert the
26 fraudulent joinder of any Defendant as to any individual Plaintiff (and spouse if
27 applicable) who does not allege ingestion of a product manufactured by that
28

1 Defendant, such that complete diversity would exist as to that Plaintiff upon the
2 severance requested above.

3 **ALL REMOVAL PROCEDURES ARE SATISFIED**

4 56. Because this case is removable as a mass action together with the other
5 actions embraced by the Petition for Coordination, all of those cases are being
6 removed upon substantially the same grounds.

7 57. Removing Defendant has not yet been served in this action.
8 Accordingly, this removal is timely, since Removing Defendant was not required to
9 remove until 30 days from service of the Complaint. *See* 28 U.S.C. § 1446(b)(1).

10 58. All defendants properly joined and served consent to the removal of this
11 action, since Removing Defendant is informed that only McKesson Corporation has
12 been served in this action and that McKesson Corporation consents to its removal.
13 *See id.* § 1446(b)(2)(A). In addition, Removing Defendant states that, with respect to
14 the mass action removal, the consent of other Defendants to remove is not required.
15 *See id.* § 1453(b).

16 59. Removing Defendant states that no Defendant properly joined and
17 served is a resident of this State, because McKesson, the only alleged citizen of
18 California, is fraudulently joined for the reasons set forth above. *See id.* §
19 1441(b)(2). Moreover, with respect to mass action jurisdiction, removal is not barred
20 by the California citizenship of any Defendant. *See id.* § 1453(b).

21 60. Removing Defendant has not been served in this action with any
22 process, pleadings or orders. Nevertheless, Removing Defendant attaches the
23 Complaint in this action as Exhibit A to the accompanying Declaration. *See id.* §
24 1446(d).

25 61. Written notice of this removal is being provided to all adverse parties
26 and is being filed with the clerk of the California Superior Court. *See id.*

27 62. Removing Defendant hereby reserves its right to amend this notice of
28 removal.

1 INTRADISTRICT ASSIGNMENT

2 63. Plaintiffs filed this case in the Superior Court of the State of California
3 for the County of Riverside. Therefore, this case may properly be removed to the
4 Eastern Division of the Central District of California. *See* 28 U.S.C. § 1441(a).

5 NO ADMISSION

6 64. Removing Defendant does not concede in any way that the allegations in
7 Plaintiffs' pleadings are accurate, or that Plaintiffs are entitled to compensatory or
8 statutory damages, penalties, punitive damages, attorney fees, or any other relief.


9 * * * *

10 WHEREFORE, Removing Defendant respectfully removes this action from
11 the Superior Court of the County of Riverside, in the State of California, bearing
12 Number RIC1216707, to this Court.

13 DATED: November 20, 2012

Respectfully submitted,

14 GREENBERG TRAURIG, LLP

15
16 
17 Amy B. Alderfer
18 Attorneys for Defendant Teva Pharmaceuticals
USA, Inc.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Virginia A. Phillips and the assigned discovery Magistrate Judge is David T. Bristow.

The case number on all documents filed with the Court should read as follows:

EDCV12- 2039 VAP (DTBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETI (a) PLAINTIFFS (Check box if you are representing yourself ☐)
THOMAS, SHIRLEY, et al. (see attachment)DEFENDANTS
see attachment(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
see attachmentAttorneys (If Known)
Ginger Pigott (SBN 162908) (pigottg@gtlaw.com)
Amy B. Alderfer (SBN 205482) (alderfera@gtlaw.com)
GREENBERG TRAURIG, LLP
1840 Century Park East, Ste. 1900
Los Angeles, CA 90067, 310-586-7700
Attorneys for Defendant Teva Pharmaceuticals USA, Inc.

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No☐ MONEY DEMANDED IN COMPLAINT: \$VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
28 U.S.C. §§ 1332, 1441 (diversity); federal preemption of claims for damages due to ingestion of prescription medication w/ propoxyphene

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/ Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input checked="" type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/ Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input checked="" type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 61 HIA(1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	IMMIGRATION	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW 405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: ED CV12-02039

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETVIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ YesIf yes, list case number(s): 12-cv-04399-PSG(Ex); 12-cv-00818-JFW(PLAx); 11-cv-06147-PSG(Ex)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events; or
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☒ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Riverside	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Alabama, Delaware, Indiana, Kentucky, Maryland, Massachusetts, North Carolina, Pennsylvania, Missouri, West Virginia, New Jersey, Nevada, Ireland

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Plaintiffs allege a substantial part of the events giving rise to this claim occurred within the County of Riverside	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Amy B. Alderfer (mkb) Date November 20, 2012
Amy B. Alderfer

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Attachment to Civil Cover Sheet CV-71

Item I.(a) — Additional Plaintiffs

MCKISKI, BARBARA, individually and as next of kin to KENNETH MCKISKI,
deceased;
MCMILLIAN, ANGEL, individually and as next of kin to TERRY L. MCMILLAN,
deceased;
MORGAN, KRISTINE, individually and as next of kin to DENNIS WAGNER,
deceased;
MOSS, YVONNE, individually and as next of kin to STEVEN W. MOSS, deceased;
NOEL, WARREN, individually and as next of kin to MARY NOEL, deceased;
PHILLIPS, LINDA, individually and as next of kin to BOBBY L. PHILLIPS,
deceased;
PROCTOR, MARTHA, individually and as next of kin to MICHAEL R. PROCTOR,
deceased;
RAINE, TINA, individually and as next of kin to RONALD RAINÉ, deceased;
RAMER, ROCKY, individually and as next of kin to GLENYS RAMER, deceased;
RICHARDSON, JAMES, individually and as next of kin to BARBARA
RICHARDSON, deceased;
ROBINSON, PATRICK, individually and as next of kin to BRANDY ROBINSON,
deceased;
ROBINSON, SANDRA, individually and as next of kin to DANIELLE
SCARBROUGH, deceased;
ROLLER, KAY, individually and as next of kin to CHARLES ROLLER, deceased;
ROSS, JAMES, individually and as next of kin to MARIE THORPE, deceased;
SAVAGE, BARBARA, individually and as next of kin to AMBERLEE KAE
MURPHY, deceased;
SEALS, NONA, individually and as next of kin to CHARLES RAY SEALS, deceased;
SHEPPARD, WILLIAM, individually and as next of kin to EDDIE M. SHEPPARD,
deceased;
SHERRY, MARGARET, individually and as next of kin to ANTHONY SHERRY,
deceased;
SHORE, TAMMY, individually and as next of kin to MARK D. SHORE, deceased;
SIMONS, LINDA, individually and as next of kin to THOMAS SIMONS, deceased;
SNODGRASS, SUSAN, individually and as next of kin to FRANKLIN BAIR,
deceased;
SNYDER, ANETRA, individually and as next of kin to ELIZABETH PIERCE,
deceased;
STEWART, BARBARA, individually and as next of kin to TERRY W. STEWART
SR., deceased;
STONE, GLADYS, individually and as next of kin to GILMER D. STONE, deceased;

1 STRAUSS, ELISABETH, individually and as next of kin to CLARA HENDREN,
2 deceased;
3 SUDDUTH, LINDA, individually and as next of kin to JAMES STEVENSON,
4 deceased;
5 TAYLOR, MARGARET, individually and as next of kin to CHARLES E. TAYLOR,
6 deceased;
7 TUOHY, SARAH, individually and as next of kin to SAMUEL WILLIS, deceased;
8 VANZYVERDEN, SHIRLEY, individually and as next of kin to JOHNNIE PAUL
9 PARTIS, deceased;
10 WHITE, ARTHUR, individually and as next of kin to KAREN M. WHITE, deceased;
11 WHITE, DONNA, individually and as next of kin to EARL WHITE, deceased;
12 WHITE, SAMANTHA, individually and as next of kin to JAMES SHELTON,
13 deceased;
14 WILLIAMS, KRISTEN, individually and as next of kin to CAROL ANTHONY,
15 deceased;
16 WINNER, BILLIE JO, individually and as next of kin to BARBARA L. CLARK,
17 deceased;
18 WINNER, BILLIE JO, individually and as next of kin to CARLTON J. CLARK,
19 deceased;
20 WOMACK, PATRICIA, individually and as next of kin to CHAUNCEY WOMACK,
21 deceased;
22 WOOD, LINDA, individually and as next of kin to THOMAS WOOD, deceased;
23 and
24 YANCEY, SHEILA, individually and as next of kin to SARITA DURDEN,
25 deceased

18 **Item I.(a) — Defendants**

19 AAI DEVELOPMENT SERVICES, INC.
20 AAI PHARMA SERVICES, INC.
21 AAIPHARMA LLC
22 AAIPHARMA, INC.
23 BRENN DISTRIBUTION, INC.
24 BRENN MANUFACTURING, INC.
25 CORNERSTONE BIOPHARMA HOLDINGS, INC.
26 CORNERSTONE BIOPHARMA, INC.
27 CORNERSTONE PHARMACEUTICALS, INC.
28 COVIDIEN INC.
COVIDIEN PLC
ELI LILLY AND COMPANY
ENDO PHARMACEUTICALS HOLDINGS INC.
ENDO PHARMACEUTICALS, INC.

1 GENERICS BIDCO I, LLC
 2 GENERICS BIDCO II, LLC
 3 GENERICS INTERNATIONAL (US PARENT), INC.
 4 GENERICS INTERNATIONAL (US), INC.
 5 MALLINCKRODT INC.
 6 MCKESSON CORPORATION
 7 MYLAN PHARMACEUTICALS, INC.
 8 MYLAN, INC.
 9 NEOSAN PHARMACEUTICALS INC.
 10 PROPST DISTRIBUTION, INC.
 11 QUALITEST PHARMACEUTICALS, INC.
 12 TEVA BIOPHARMACEUTICALS, INC.
 13 TEVA PHARMACEUTICALS USA, INC.
 14 VINTAGE PHARMACEUTICALS, INC.
 15 VINTAGE PHARMACEUTICALS, LLC
 16 WATSON PHARMACEUTICALS, INC.
 17 XANODYNE PHARMACEUTICALS, INC.

13 **Item I.(b) — Attorneys**

14 Attorneys for Plaintiffs

15 J. Paul Sizemore	Matthew J. Sill
16 THE SIZEMORE LAW FIRM	SILL LAW GROUP PLLC
17 2101 Rosecrans Ave., Suite 3290	14005 N. Eastern Ave.
18 El Segundo, CA 90245	Edmond, OK 73103
<i>Attorneys for Plaintiffs</i>	<i>Attorneys for Plaintiffs</i>